

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**NATIONAL AMERICAN INSURANCE
COMPANY, an Oklahoma corporation,**

Plaintiff,

VS.

W&G, INC., a Nebraska corporation, REPUBLIC WESTERN INSURANCE COMPANY, an Arizona corporation, COLBERG HARVESTING INC., a Kansas corporation, and COLBERG TRANSPORTATION INC., a Kansas corporation,

Defendants.

CASE NO. 8:03CV281

**MEMORANDUM AND ORDER ON
W&G, INC.'S MOTION FOR
SUMMARY JUDGMENT ON
ATTORNEY FEES**

In connection with its motion for summary judgment against National American Insurance Company (“NAICO”), Defendant W&G, Inc. (“W&G”) requested that the Court award a reasonable attorney fee and expenses pursuant to Nebraska Revised Statute §44-359. NAICO has informed the Court that, without waiving any issues for appeal, it has no evidence to offer in opposition to Defendant W&G’s motion for attorney fees.

The relevant statute states:

In all cases when the beneficiary or other person entitled thereto brings an action upon any type of insurance policy . . . the court, upon rendering judgment against such company . . . shall allow the plaintiff a reasonable sum as an attorney's fee in addition to the amount of his or her recovery, to be taxed as part of the costs.

Neb. Rev. Stat. § 44-359 (Reissue 2004). The Nebraska Supreme Court has construed this statute to permit an award of attorney fees to an insured who prevails in a disputed coverage action brought by an insurer. *See State Farm Mut. Auto Ins. Co. v. Selders*, 202 N.W.2d 625, 626 (1972). At least one previous decision of this Court has recognized

Selders and observed that there are no obstacles to this Court awarding attorney fees and expenses pursuant to Neb. Rev. Stat. §44-359 to a prevailing insured in a declaratory judgment action. See *Paxton & Vierling Steel Co. v. Great American Ins. Co.*, 497 F.Supp. 573, 582 (D. Neb. 1980).

I have reviewed the Affidavit of Jefferson Downing and its attachments (Filing No. 66), which are unchallenged by the Plaintiff. I find that the request for attorney fees and expenses is reasonable. Accordingly, W&G's motion for summary judgment as to attorney fees is granted, and the Court concludes that NAICO shall pay to W&G \$10,211.63 in fees and expenses.

IT IS ORDERED:

The Motion for Summary Judgment filed by Defendant W&G, Inc. (Filing No. 36) as to the award of attorney's fees is granted.

Dated this 25th day of May, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge